

आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.755/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2018-19)
&
Stay Application No.41/Chny/2023
(In ITA No.755/Chny/2022)
(निर्धारण वर्ष / Assessment Year: 2018-19)

M/s. ST Engineering Electronics Ltd. (Chennai Project Office) Orchid Center, First floor. 71, Nelson Manickam Road, (Facing Kannappan Street), Aminjikarai, Chennai-600 029.	बनाम / Vs.	ACIT International Taxation, Circle-2(2) Chennai-600 006.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No.	AAQCS-9207-A	
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri Sachit Jolly (Sr. Advocate)-Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Nilay Baran Som (CIT)- Ld. DR

सुनवाई की तारीख/Date of Hearing	:	06-11-2023
घोषणा की तारीख /Date of Pronouncement	:	08-11-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2018-19 arises out of the final assessment order dated 26-07-2022 passed by Ld. Asstt. Commissioner of Income Tax, International Taxation Circle 2(2),

Chennai [AO] u/s. 143(3) r.w.s. 144C(13) pursuant to the directions of Ld. Dispute Resolution Panel-2, Bengaluru issued on 16-06-2022 u/s. 144C(5) of the Act. The appeal is accompanied by stay application wherein the assessee is seeking stay of recovery of outstanding demand by the revenue.

2. At the time of hearing, Ld. AR did not press for ground no. 1 which is relating to limitation and jurisdiction. Ground No.3 is related to charging of interest and initiation of penalty proceedings which is consequential / pre-mature in nature requiring no specific adjudication. The only substantive ground is ground no.2 which read as under: -

2.1 That on the facts and circumstances of the case, the Dispute Resolution panel ('DRP') erred in upholding the addition of Rs.14,41,72,414 made by the Assessing Officer in respect of alleged short Contract Revenue accounted by the Appellant merely based on the applications filed by the Appellant under Section 197 of the Act in the earlier years.

2.2 That the DRP/AO erred on facts and in law in not appreciating that the regular assessment cannot be framed merely on the basis of the estimated Contract Revenue declared in the application filed under Section 197 of the Act.

2.3 That the DRP/ AO erred on facts and in law in making adverse observations against the accounting for Contract Revenue by the Appellant without appreciating that the same is in accordance with Accounting Standard 7 and has been certified by the auditors in the audited annual accounts and have even been accepted in the earlier years by the Revenue.

2.4 The DRP/AO erred on facts and in law in not appreciating that the subject contract revenue was earned by the Appellant in respect of a fixed price contract and hence, the addition of any alleged contract revenue is clearly notional, which is legally impermissible.

2.5 Without prejudice, the DRP/AO erred on facts and in law in adopting the estimated Contract Receipts of Rs.25,87,75,608, as against Rs.18,88,47,856 which was declared in application under Section 197 of the Act filed for the AY 2018-19.

2.6 Without prejudice, the DRP/AO further erred in not excluding the Contract Revenue already inflated and added during the A Y 2017-18.

2.7 Further without prejudice, the DRP/AO erred on facts and in law in not directing that the Contract Revenue already considered & offered to tax in the succeeding years should be excluded otherwise it will lead to double taxation, which is impermissible.

3. The Ld. AR advanced arguments and supported the case of the assessee by drawing our attention to various documents / details as

placed on record. The Ld. AR submitted that the assessee has executed fixed price contract and contract revenues earned by the assessee has duly been offered to tax over the life of contract in accordance with applicable Accounting Standard. The Ld. AR further submitted that the impugned additions, if sustained, would amount to double taxation and would result into bringing to tax contract revenues much above than the agreed revenues to be received by the assessee under the contract. The Ld. CIT-DR, on the other hand, supported the workings of Ld. AO and submitted that the same is in accordance with the application made by the assessee u/s 197. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Proceedings before lower authorities

4.1 The assessee is a foreign company incorporated in Singapore. The assessee has entered into a fixed price sub-contract agreement with M/s Siemens Ltd. who is awardee of contract for undertaking signaling, platform screen doors and telecommunication work for Chennai Metro Rail Project. M/s Siemens Ltd. has sub-contracted certain portion of the telecommunication work to the assessee. The execution of the project started from financial year 2012-13 and is ongoing till financial year 2017-18.

4.2 A draft assessment order was passed by Ld. AO on 29-09-2021. It transpired that the assessee debited 'contract losses recognized' for Rs.495.65 Lacs. The assessee's projected cost and revenue of the entire project as submitted during Sec.197 (lower withholding certificates) proceedings for earlier years would show that the amount stated to be received by the assessee for this year was Rs.2587.75 Lacs which was at huge variation to the amount of Rs.1146.03 Lacs as

reflected by the assessee in the financial statements. Accordingly, the assessee was show-caused to adopt estimated revenue and to disallow the estimated loss of Rs.495.65 Lacs.

4.3 The assessee, inter-alia, submitted that the duration of the project got extended to financial year 2020-21 much beyond the agreed original contract period. It was further stated that the assessee followed percentage of completion method to recognize the revenue. The revenue projections submitted in the course of Sec.197 proceedings were based on the estimated work completion. However, the revenue shown in financial statements were based on actual work certified by M/s Siemens which is based on survey of work performed. Further, the assessee was unable to complete the work it had estimated and accordingly, it recognized revenue only for the portion of the work that was completed and certified. The assessee also submitted that the estimated costs provided in the aforesaid projections were also reduced to the extent of work expected to be completed. Lastly, the unrecognized portion of the contract revenue was recognized and offered to tax in succeeding years in which the work was completed and certified. The assessee claimed deduction of expenses only in relation to work completed and certified. To support the same, the assessee filed the reconciliation of work done by it. It was also submitted that the projections furnished at the time of obtaining lower withholding certificate u/s 197 could not form the basis to determine the revenue from operations.

4.4 However, Ld. AO alleged that the assessee was claiming expenses as an when it was incurred whereas the revenue was being offered as and when CMRL and Siemens were approving their bills. The same was opposed to concept of Percentage of Completion Method. As against

estimated projection of 21.29%, it has recognized only 9.43% of project revenue. As per applicable Accounting Standard-7 (AS-7), contract revenue is matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed. The same was not happening in assessee's case since the assessee has recognized contract losses for Rs.495.65 Lacs in the current year. Though the assessee has accepted the total contract realizable value to be Rs.121.52 Crores, it is offering only the sanctioned amount to tax in this year. The same has skewed the entire proportion of expense vis-à-vis revenue and has not really remained in the nature of a Percentage Completion method. Accordingly, the projected revenue of Rs.2587.75 Lacs was considered to be the turnover of the assessee and the shortfall in revenue for Rs.1441.72 Lacs was added to the income of the assessee. The Ld. DRP merely endorsed the action of Ld. AO. Considering the direction of Ld. DRP, a final assessment order was passed by Ld. AO on 26-07-2022 making the impugned addition against which the assessee is in further appeal before us.

Our findings and Adjudication

5. It could be seen that the whole basis of making impugned addition is the financial projections made by the assessee in an application made in earlier year u/s 197 seeking lower deduction of tax at source certificate on contract revenue. In these proceeding, the assessee estimated the project revenue over the life of the contract and sought lower TDS certificates. The assessee has undertaken fixed price contract and accordingly, the contract revenue would remain quantified for the assessee over the life of the contract. The financial statements would

establish that the assessee is following percentage completion of method of accounting to recognize the revenue in the books of accounts. The same methodology is being followed to claim the applicable costs. The execution of the project started from financial year 2012-13 and is ongoing till financial year 2017-18. This method of accounting is being consistently followed by the assessee and accepted by the revenue. We further find that in terms of para-25 of AS-7, under the percentage of completion method, contract revenue is recognized as revenue in the statement of profit and loss in the accounting periods in which the work is performed. Contract costs are usually recognized as an expense in the statement of profit and loss in the accounting periods in which the work to which they relate is performed. However, any expected excess of total contract costs over total contract revenue for the contract is recognized as an expense immediately irrespective of stage of completion of contract activity. Following the same, the assessee has recognized contract losses of Rs.495.65 Lacs and there is no deviation from the accounting standard as alleged by Ld. AO.

6. We find that in the application made u/s 197, the assessee has merely projected the contract revenue and these estimations could not be taken to be the turnover of the assessee disregarding the actual revenue earned by the assessee. No defect in books of accounts has been pointed out by Ld. AO. The deviation in estimation and actual revenue stood explained by the fact that the duration of the project got extended to financial year 2020-21 which is much beyond the agreed original contract period. The revenue projections submitted in the course of Sec.197 proceedings are merely based on the estimated work completion whereas the revenue shown in financial statements is based

on actual work certified by contractor on the basis of survey of work performed. Therefore, the financial results were to be accepted. The assessee was unable to complete the project it had estimated and accordingly, it has recognized revenue only for the portion of the work that has been completed and certified. The same, in our considered opinion, is correct methodology.

7. Another pertinent fact is that aggregate contract revenue has been offered to tax over the life of the contract period starting from financial years 2012-13 to 2022-23 which is evidenced by the details of invoices as placed on record. The same supports the argument of Ld. AR that there is no leakage of contract revenue and taxing more amounts in this year would result into bringing to tax contract revenues much more than the fixed price contract value to be received by the assessee over the life of contract. The same could not be held to be justified, in any manner.

8. Therefore considering the facts and circumstances of the case, we would hold that the impugned additions are unsustainable. The corresponding grounds raised by the assessee stand allowed. The stay application has been rendered infructuous.

9. The appeal stand partly allowed. The stay application is dismissed as infructuous.

Order pronounced on 8th November, 2023

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई Chennai; दिनांक Dated :08-11-2023

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आदेशकीप्रतिलिपिअप्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्था/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखासदस्य / ACCOUNTANT MEMBER